

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

BASF AGRO B.V., MERIAL LIMITED,
and MERIAL SAS

Plaintiffs,

v.

CIPLA LIMITED, *et al.*,

Defendants, and

VELCERA, INC. and FIDOPHARM, INC.

Intervenors.

Civil Case No. 3:07-cv-00125-CDL

EXHIBIT 5

**TO VELCERA'S SUPPLEMENTAL MEMORANDUM
OPPOSING MERIAL'S CONTEMPT MOTION**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

BASF AGRP B.V., MERIAL LIMITED,)
and MERIAL SAS,)
Plaintiffs,) Case No.: 3:07-cv-00125 (CDL)
v.)
CIPLA LIMITED, PETMEDS R US,)
GENERIC PETMEDS, PETCARE)
PHARMACY, ARCHIPELAGO)
SUPPLIERS, ARROWTARGET)
ENTERPRISES, LTD., IN HOUSE)
DRUGSTORE, and LISA PERKO,)
Defendants.)

MOTION TO INTERVENE BY VELCERA, INC.
AND FIDOPHARM, INC.

Pursuant to Fed. R. Civ. P. 24, Velcera, Inc. (“Velcera”) and FidoPharm, Inc. (“FidoPharm”) (collectively, “Intervenors”), through counsel, hereby move to intervene in the contempt proceeding arising out of the above-referenced action as commenced by the Motion for Contempt filed on March 28, 2011. As grounds for this Motion, Intervenors will show that their application is timely, that they have an interest relating to property which is the subject of the Motion for Contempt, that disposition of the action in their absence may impede or impair their ability to protect their interest, and that their interest(s) will not be adequately represented by existing parties to the suit.

For further grounds for this Motion, the Court is referred to the Intervenors’ Memorandum of Law in support of Motion to Intervene, filed concurrently herewith.¹

¹ Intervenors recognize the provision in Fed. R. Civ. P. 24(c) requiring that a pleading accompany the motion to intervene. However, this Motion is filed when the case is in a somewhat unusual procedural posture, where Velcera and FidoPharm seek to intervene post-judgment due to Merial’s effort to broaden

Accordingly, for each of the reasons set forth herein and in the accompanying Memorandum of Law, Intervenors respectfully request an Order granting this Motion and permitting them to intervene in the above action.

Respectfully submitted this 8th day of April, 2011.

PAGE, SCRANTOM, SPROUSE,
TUCKER & FORD, P.C.

By:/s/ Kirsten C. Stevenson

1111 Bay Avenue, Third Floor
Columbus, Georgia 31901
(706) 324-025
wlt@psstf.com
jcc@psstf.com
tfg@psstf.com
kcs@psstf.com

William L. Tucker
Ga. Bar No.: 718050
James C. Clark, Jr.
Ga. Bar No.: 127145
Thomas F. Gristina
Ga. Bar No.: 452454
Kirsten C. Stevenson
Ga. Bar No.: 801101

COOLEY LLP
Jonathan G. Graves
Phillip E. Morton
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, Virginia 20190
Telephone: (703) 456-8000
Facsimile: (703) 456-8100

COOLEY LLP
Tryn T. Stimart
777 6th Street NW, Suite 1100
Washington, DC 20001

an existing injunction to cover their products several years after the injunction was entered. The Eleventh Circuit Court of Appeals does not strictly construe Rule 24, “disregard[ing] nonprejudicial technical defects,” particularly when the motion to intervene “clearly spell[s] out [the intervenor’s] position.” *Piambino v. Bailey*, 757 F.2d 1112, 1121 (11th Cir. 1985). The concurrently filed memorandum of law clearly spells out why Intervenors seek to intervene and the relief they are seeking. If the Court would prefer that Intervenors file a pleading, Intervenors will do so at the Court’s request.

Telephone: (202) 842-7800
Facsimile: (202) 842-7899

*Attorneys for Moving Parties Velcera, Inc. and
FidoPharm, Inc.*

CERTIFICATE OF SERVICE

I do hereby certify that I am counsel for Intervening Parties Velcera, Inc. and FidoPharm, Inc. in the above-styled action, and that a true and exact copy of the foregoing document, Motion to Intervene by Velcera, Inc. and FidoPharm, Inc., was electronically filed today using the CM/ECF system, which will automatically deliver notice of same to:

Edgar Haug
Thomas J. Kowalski
Vicki Franks
Frommer Lawrence & Haug, LLP
745 Fifth Avenue
New York, NY 10151

Edward Tolley
Cook, Noell, Tolley, Bates &
Michael, LLP
P.O. Box 1927
Athens, Georgia 30603

Elizabeth K. Haynes
Frank G. Smith, III
Alston & Bird
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424

J. Patrick Elsevier
Jones Day
12265 El Camino Real, Suite 200
San Diego, CA 92130-4096

Judy de Leon Jarecki Black
Merial Limited
3239 Satellite Blvd.
Duluth, Georgia 30096

*Attorneys for BASF AGRO BV,
Merial Limited, and Merial SAS*

and
Neal J. Callahan
Waldrep, Mullin & Callahan
P.O. Box 351
Columbus, Georgia 31902-0351

Attorneys for Cipla Limited

This 8th day of April, 2011.

/s/ Kirsten C. Stevenson
Counsel for Moving Parties Velcera, Inc. and
FidoPharm, Inc.